

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 26, 2008

JESSE FULFER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Morgan County
No. 9353 E. Eugene Eblen, Judge

No. E2007-02079-CCA-R3-HC - Filed May 29, 2008

Petitioner, Jesse Fulfer, pled guilty in Marion County to one count of second degree murder and one count of aggravated robbery. He subsequently filed a petition for writ of habeas corpus relief. The habeas corpus court summarily dismissed the petition based on the fact that Petitioner failed to adhere to the mandatory statutory provision found in Tennessee Code Annotated section 29-21-107. The habeas corpus court also found that Petitioner's issue that he entered his guilty plea involuntarily was not a cognizable issue for habeas corpus relief. After reviewing the record, we find that Petitioner failed to adhere to the statutory requirements for habeas corpus relief by failing to attach the underlying judgment. In addition, the involuntary entry of a guilty plea is not a cognizable issue for relief under habeas corpus because it would render the judgment merely voidable as opposed to void as is required to obtain habeas corpus relief. Therefore, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Jesse Fulfer, Pro Se, Wartburg, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilbur, Assistant Attorney General; J. Scott McCluen, District Attorney General, for the appellee, State of Tennessee.

OPINION

In the early morning hours of April 8, 2003, Petitioner went to the victim's house to borrow money. The victim refused to lend Petitioner money. Because the victim was known to keep large amounts of cash on his person, Petitioner decided to wait until the victim fell asleep and take the money. Petitioner remained with the victim and they smoked cigars and talked. However, the victim

did not fall asleep. Petitioner tied the victim up with a garbage bag and there was a slight struggle. The victim fell forward onto the floor. Petitioner took the money and some other items and left the victim. Later that day, witnesses saw Petitioner with large amounts of cash pay for a car and put down a cash deposit for an apartment.

The victim's next-door neighbors noticed that the victim's car was parked on the street which was unusual. They went to check on him and discovered the victim was deceased. The neighbors also noticed that another car owned by the victim was missing. Authorities called to the scene found a plastic bag in the victim's hand and pieces of plastic bag under a chair next to the victim. The victim was older and had many medical problems. Petitioner was aware of the victim's medical problems when he went to his house. A medical examiner who performed an autopsy determined that the stress of the robbery caused the victim to have a heart attack due to his weakened physical condition.

In June of 2003, the Marion County Grand Jury indicted Petitioner with one count each of first degree murder, felony murder and aggravated robbery. On December 30, 2004, the trial court accepted Petitioner's guilty plea to one count of second degree murder and one count of aggravated robbery. The State recommended a sentence of twenty years for the second degree murder and ten years for the aggravated robbery charge to be run concurrently. According to Petitioner's pleadings, this is the sentence he received.

On July 25, 2007, Petitioner filed a pro se petition for writ of habeas corpus. Petitioner alleged that he entered an involuntary guilty plea. On August 24, 2007, the State filed a motion to dismiss. On September 4, 2007, the habeas corpus court summarily dismissed Petitioner's petition. The habeas corpus court based this dismissal upon Petitioner's failure to attach the underlying judgment and state whether this was his first application for habeas corpus relief. In addition, the habeas corpus court noted that Petitioner's issue that his plea was entered involuntarily is not cognizable under habeas corpus because it would render a judgment voidable not void. Petitioner filed a timely notice of appeal

ANALYSIS

On appeal, Petitioner argues that the habeas corpus court erred in summarily dismissing his petition. The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned

despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See *Taylor*, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 995 S.W.2d at 83).

However, if after a review of the habeas petitioner’s filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), *superceded by statute as stated in State v. Steven S. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. For the benefit of individuals such as Petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner’s behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant’s knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

A habeas corpus court “properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements.” *Summers*, 212 S.W.3d at 260; *See also Hickman*, 153 S.W.3d at 21. Further, in *Summers*, our supreme court explained:

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.

212 S.W.3d at 261.

We have reviewed the record in this case. Petitioner did not attach the underlying judgment. In his memorandum of law supporting the petition for writ of habeas corpus, Petitioner states that he filed a previous application for a writ, but it was withdrawn without adjudication. There is no statement to this effect in the actual petition nor is there a reference to the memorandum of law to find this information. We need not determine whether the statement in the memorandum of law is sufficient to meet the statutory requirements because the failure to attach the underlying judgment is enough, in and of itself, to support the habeas corpus court’s summary dismissal of the petition.

In addition, as the trial court stated, the Petitioner’s issue is not a cognizable claim for a petition for writ of habeas corpus relief. *See Passarella*, 891 S.W.2d at 627.

Therefore, this issue has no merit.

CONCLUSION

For the foregoing reasons, we affirm the determination of the habeas corpus court.

JERRY L. SMITH, JUDGE